

**Potential Applicable or Relevant and Appropriate Requirements and To Be Considered Initiatives for the Portland Harbor Superfund Site RI/FS.**

Regulation	Citation	Applicability/Relevance and Appropriateness
<b><u>FEDERAL ARARS</u></b>		
<b><u>CLEAN WATER ACT</u></b>	33 U.S.C. §§1251 <u>et seq.</u>	
Federal Water Quality Criteria	CWA §§303 and 304	<p>Chemical-specific—chronic criteria for protection of freshwater aquatic life only, based on <u>RAO # 5</u> (relevant and appropriate).</p> <p>Chronic National Recommended Water Quality Criteria for the protection of freshwater aquatic life are potentially relevant if state does not have established numeric criterion for specific constituent of concern. If a state has promulgated a WQC for a given chemical and use, the state standard would be relevant and appropriate rather than the federal WQC. <i>EPA, CERCLA Compliance with Other Laws Manual (Aug. 1988) at § 3.2.3.2.</i> Once approved by EPA (such as DEQ Table 20), the state WQC is enforced by EPA as the federal WQC for that state. DEQ Table 33A has been adopted by the State but has not yet been approved by EPA.</p> <p>Action-specific (relevant and appropriate): Potentially relevant and appropriate when water is discharged from dewatering or treatment areas at sediment cleanup sites <i>EPA, Contaminated Sediment Remediation Guidance for Hazardous Waste Sites (Dec. 2005) at 3.3.</i> See discussion above regarding relationship between federal and state criteria.</p>
Discharge of dredge and fill material	CWA §404, including §404(b)(1) guidelines set forth at 40 CFR Part 230	<p>Action-specific (applicable).</p> <p>Substantive requirements of CWA §404 are potentially applicable in the event of discharges of dredged or fill materials into waters of the U.S.; specifically, dredging, capping, certain enhanced natural attenuation, and construction of in-water or nearshore disposal facilities (including CDFs) in the Willamette River. Unavoidable impacts must be minimized, and impacts that cannot be minimized must be mitigated.</p>
Discharge of pollutants to waters	CWA §401, including 40 CFR Part 121.2(a)(3) and (4)	<p>Action-specific (applicable).</p> <p>State certification process if CWA § 404 jurisdiction triggered, which EPA is responsible for implementing. Potentially applicable to dredging, capping, and nearshore disposal facilities in the Willamette River.</p>
NPDES program	CWA §402 40 CFR Part 125, Subpart A	<p>Action-specific (relevant and appropriate if no state promulgated program).</p> <p>Potentially relevant and appropriate requirement for point source discharges (other than from dredged materials covered under CWA §404 and §401). Where states have been delegated authority for the NPDES program under the CWA, EPA will consult with and apply the state program. <i>EPA, Contaminated Sediment Guidance at Highlight 3-2.</i></p>
<b><u>FEMA (Federal Emergency Management Act)</u></b>	42 U.S.C. §§ 5170 <u>et seq.</u> 44 CFR 60.3(d)(3)	<p>Action-specific and location-specific (applicable).</p> <p>This requirement is potentially applicable to remedial activities in upland flood plains and in the Willamette River that would result in increasing flood heights within the floodplain.</p>
<b><u>RIVERS AND HARBORS ACT OF 1899, Section 10</u></b>	33 U.S.C. §§401 <u>et seq.</u> 33 CFR parts 320 to 323	<p>Action-specific and location specific (applicable).</p> <p>Substantive requirements of Section 10 would be potentially applicable to construction of any structure within a navigable waterway that would impede navigation and commerce, potentially including capping and construction of CDFs. May overlap with CWA § 404 substantive requirements.</p>

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<b><u>CLEAN AIR ACT</u></b>	42 U.S.C. §§7401 <u>et seq.</u>	Action-specific. Potentially applicable if dredging and/or excavation activities generate air emissions.
<b><u>TOXIC SUBSTANCES CONTROL ACT</u></b>	15 U.S.C. §§ 2601 <u>et seq.</u> 40 CFR Part 761	Action-specific (applicable to sediments containing greater than 50 ppm PCBs). Potentially applicable if dredging and/or excavation activities result in the removal and disposal of PCB-contaminated sediment that fits definition of “PCB remediation waste,” which generally would only include sediments with concentration greater than 50 ppm. Other substantive requirements of TSCA potentially applicable to storage and other activities involving PCB-contaminated wastes, defined as those containing greater than 50 ppm PCBs. Composite grid sampling required to evaluate site to determine if 50 ppm threshold exceeded. <i>EPA, Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup (May 1986).</i>
<b><u>ENDANGERED SPECIES ACT</u></b>	16 U.S.C. §§ 1531 <u>et seq.</u>	Action-specific and location-specific (applicable). Section 7 of Endangered Species Act “requires federal agencies to ensure that the actions they authorize, fund or carry out are not likely to jeopardize the continued existence of endangered or threatened species, or adversely modify or destroy their critical habitat.” <i>EPA, Contaminated Sediment Guidance at 3-8.</i> Potentially applicable due to impacts that sediment excavation and/or dredging may have on endangered or threatened species or critical habitat that are present at the site or that may be affected by the action.
<b><u>MARINE MAMMAL PROTECTION ACT</u></b>	16 U.S.C. §§1361 <u>et seq.</u> 50 CFR 216	Action-specific and location-specific (applicable). Potentially applicable due to impacts that sediment excavation and/or dredging may have on marine mammals that are present at the site or that may be affected by the action.
<b><u>HAZARDOUS MATERIALS TRANSPORTATION ACT</u></b> , U.S. DOT Subchapter C regulations	49 U.S.C. §§1801 <u>et seq.</u> 40 CFR Parts 171-177	Action-specific (applicable). Potentially applicable requirement to any hazardous sediments that are removed (excavated and/or dredged) and shipped off-site for disposal or remediation.
<b><u>NATIONAL HISTORIC PRESERVATION ACT</u></b>	16 U.S.C. §§ 470 <u>et seq.</u>	Action-specific and location-specific (applicable). Potentially applicable to dredging and/or excavation activities and requires EPA to consider whether cultural resources included on or eligible for inclusion on the National Register of Historic Places will be affected.
<b><u>ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT</u></b>	16 U.S.C. §§469 <u>et seq.</u>	Action-specific and location-specific (applicable). Potentially applicable to dredging and/or excavation activities and requires EPA to consider whether historical and archaeological data may be irreparably lost through dam construction or alteration of terrain, and mandates preservation of the data.

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<b><u>MIGRATORY BIRD TREATY ACT</u></b>	16 U.S.C. §§703-712 50 CFR §10.12	Action-specific and location-specific (applicable).  Potentially applicable to dredging and/or excavation activities, requires EPA to consider whether such activities would result in short-term impacts, if any, on migratory birds that would cause a measureable negative effect of migratory bird populations (as explained in Executive Order 13186, 1/10/01), and specifically prohibits any activity that would be considered "pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird..."
<b><u>RCRA—Hazardous waste</u></b>	42 U.S.C. §§6901 <u>et seq.</u>	Action-specific (relevant and appropriate).  "Dredged material may be subject to RCRA requirements if it contained a listed waste, or if it displays a hazardous waste characteristic, for example, by the Toxicity Characteristic Leaching Procedure (TCLP). Most states have been authorized in lieu of EPA to implement the RCRA program. RCRA regulations may be potentially ARARs for the storage, treatment, or disposal of the dredged material unless an exemption applies. One such exemption is if CWA 404 applies to the cleanup activity (40 CFR part 261)." <i>EPA, Contaminated Sediment Guidance at Highlight 3-2</i> . RCRA requirements would be potentially applicable to the identification of any such dredged material this is a hazardous waste, and off-site management (treatment, storage, and disposal) of such hazardous waste. <i>CERCLA Compliance with Other Laws Manual (Aug. 1988) at § 2.3</i> .  Addresses all potential storage/disposal scenarios of dredged material that is a hazardous waste, including land disposal, waste piles, surface impoundments and corrective action management units (CAMU).  NOTE: hazardous waste management rules adopted by reference in OAR §340-100-0002(1), see below.
<b><u>RCRA--Solid waste</u></b> Solid Waste Disposal Facilities	42 U.S.C. §§6901 <u>et seq.</u> 40 CFR 257, Subpart A	Action-specific (relevant and appropriate, state promulgated program would apply).  May be potentially relevant and appropriate if a landfill is used for the disposal of non-hazardous "solid waste."
<b><u>STATE ARARs</u></b>		<b>WILL ONLY APPLY IF STATE-PROMULGATED, CONSISTENTLY APPLIED, AND MORE STRINGENT THAN FEDERAL REQUIREMENTS.</b>
<b><u>ENVIRONMENTAL CLEANUP ACT</u></b>	ORS 465.200 <u>et seq.</u> OAR 340-122-0090; OAR 340-122-040	Action-specific (applicable).  Includes requisite standards for remedy selection. Does not contain numeric criteria.  Potentially applicable to remediation goals, and evaluation and selection of remedial alternatives.
<b><u>HAZARDOUS WASTE</u></b>	ORS 466.005 -466.225; OAR 340-101-0033; OAR 340-104-0339	Action-specific (applicable).  Oregon has been authorized by EPA to implement the RCRA Subtitle C Hazardous Waste Program. See description above. Dredged material will be subject to RCRA hazardous waste requirements if it contains a listed waste, or if it displays a hazardous waste characteristic, unless the storage or disposal is subject to CWA § 404.

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<b><u>SOLID WASTE</u></b>	ORS Chapter 459	Action-specific (applicable).  Only applies if upland facility for solid, non-hazardous, waste disposal, handling, treatment, or transfer contemplated. Regulations for the location, design, construction, operation and closure of solid waste management facilities.
<b><u>AIR QUALITY;</u></b> Fugitive Emission Requirements, Visible Air Contaminant Limitations	ORS Chapter 468A; OAR 340-226-0100; OAR 340-208-0200, 0210; OAR 340-208-0110	Action-specific (applicable).  Prohibits any handling, transporting or storage of materials, or use of a road, or any equipment to be operated, without taking reasonable precautions to prevent particulate matter from becoming airborne. These are special rules for "special control areas," including Multnomah County.  Prohibits the emission of any air contaminant from a new source for a period or periods aggregating more than three minutes in any one hour that is equal to or greater than 20% opacity. These are special rules for "special control areas," including Multnomah County.  Potentially applicable if stationary sources generate air emissions.
<b><u>Noise Control</u></b>	OAR 340-035-0035	Action-specific (applicable).  Sets noise standards for equipment, facilities, operations, or activities employed in the production, storage, handling, sale, purchase, exchange, or maintenance of a product, commodity, or service, including the storage or disposal of waste products. This requirement is potentially applicable to some remedial activities.
<b><u>WATER QUALITY</u></b>		
State Water Quality Standards	OAR Ch. 340, Div. 041	Chemical-specific – chronic freshwater criteria only, based on <u>RAO # 5</u> (relevant and appropriate).  Designates beneficial uses for water bodies and narrative and numeric water quality criteria necessary to protect those uses. In particular, OAR 340-041-0340 designates and defines the beneficial uses that shall be protected in the Willamette Basin. For purposes of state law, Table 20 are the effective criteria unless there is a corresponding criterion under Table 33A, in which case Table 33A is effective.  Action-specific: Potentially applicable for discharges to surface water at sediment cleanup sites. <i>EPA Sediment Cleanup Guidance at Highlight 3-2</i> . Also potentially applicable to dredge and fill activities through substantial equivalent of section 401 certification.
NPDES / WPCF Permits	OAR Ch. 340 Div. 45.	Action-specific (applicable).  Oregon DEQ issues NPDES permits for direct discharges into waters of the state, and Water Pollution Control Facilities (WPCF) permits for discharges of wastewater to the ground.  May be potentially applicable to point-source discharges to the Willamette River (other than discharges from dredged materials) or onto the ground during remediation.
<b><u>STATE HARBOR LINE STATUTE</u></b>	ORS 778.085	Action-specific and location-specific (applicable).  Potentially applicable to construction of any structure or cap on the riverside of the harbor line that constitutes a hazard to or obstruction of navigation.

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<b><u>OTHER CRITERIA, ADVISORIES, GUIDANCE, AND TO BE CONSIDERED INITIATIVES</u></b>		
<b><u>Executive Orders for Floodplain and Wetlands Management</u></b>	Executive Order 11988 and 11990	Executive Order 11988 requires federal agencies to conduct their activities to avoid, if possible, adverse impacts associated with the occupation or modification of floodplains.  Executive Order 11990 requires federal agencies to conduct their activities to avoid, if possible, adverse impacts associated with the destruction or modification of wetlands.
<b><u>Watershed Management &amp; Enhancement and The Oregon Plan</u></b>	ORS Chapter 541	Establishes the Oregon Plan for “integrating regulatory efforts while fostering incentives and voluntary action for environmental stewardship”; creates the Oregon Watershed Enhancement Board and watershed councils and requires those entities to conduct a watershed enhancement program; creates some funds for watershed enhancement.  May be relevant to selection of remedial alternatives.
<b><u>WY-KAN-USH-MI WA-KISH WIT</u></b>	<a href="http://www.critfc.org/text/TRP.HTM">www.critfc.org/text/TRP.HTM</a>	The plan's objectives are to halt the decline of salmon, lamprey and sturgeon populations above Bonneville Dam within seven years. To rebuild salmon populations to annual run sizes of four million above Bonneville Dam within 25 years in a manner that supports tribal ceremonial, subsistence and commercial harvests. To increase lamprey and sturgeon to naturally sustaining levels within 25 years in a manner that supports tribal harvests. To achieve these objectives, the plan emphasizes strategies and principles that rely on natural production and healthy river systems. Simply stated, the plan's purpose is to <i>put fish back in the rivers and protect the watersheds where fish live</i> .  Sets forth the Columbia River Anadromous Fish Plan of the Nez Perce, Umatilla, Warm Springs, and Yakama Tribes; goals: to restore anadromous fishes to the rivers and streams that support historical cultural and economic practices of the tribes, (generally in areas above Bonneville Dam); to emphasize natural production and healthy river system strategies, to protect tribal sovereignty and treaty rights, and to reclaim the anadromous fish resource and the environment on which it depends; geographic scope of the plan extends to Columbia River Basin and Pacific ocean regions where anadromous fish migrate and wherever activities occur that directly affect them.  This Plan is a tribal document, and is not necessarily applicable to other sovereigns. It does not include substantive standards and does not expressly apply to the Willamette Basin. However, it's content can be generally considered in the development and selection of remedial alternatives.